

APPEAL NO. 010437

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 1, 2001. The hearing officer determined that the appellant (claimant) had not sustained a compensable (low back) injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant did not have disability.

The claimant appealed, reiterating testimony from the CCH and asserting that his past injury claims were not relevant. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as an "installer," assembling office cubicles. The claimant testified that he felt a sharp pain in his low back when he tried to lift some "pegs." On _____ the claimant reported his injury, was sent home, and saw Dr. B, a doctor the claimant had seen on some other injuries, the next day. Dr. B took the claimant off work and prescribed vicodin and physical therapy.

The claimant initially had concealed a prior motor vehicle accident six months prior to the injury at issue here, as well as several other workers' compensation claims. The hearing officer commented, "considering the totality of the evidence . . . I did not find Claimant to be a credible witness."

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge